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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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AUG 9 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Clark-Bader, Inc. d/b/a)
TMC Long Distance, Inc.,)
Complainant,)
)
v.)
)
Pacific Bell Telephone Company,)
Defendant)

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CC Docket No. 93-161
File No. AUG 9 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: Honorable Walter C. Miller
Administrative Law Judge

**MOTION FOR LEAVE TO FILE REPLY TO COMMENTS
OF THE COMMON CARRIER BUREAU**

Complainant Clark-Bader, Inc. d/b/a TMC Long Distance ("TMC"), by its attorneys, hereby requests permission for leave to file a Reply to the "Comments of the Common Carrier Bureau" filed by the Enforcement Division of the Common Carrier Bureau ("Bureau") on August 2, 1993, in response to a "Petition for Clarification" filed by Defendant Pacific Bell Telephone Company ("PacBell") on July 15, 1993 ("Petition"). In support of this Motion, the following is shown.

1. PacBell's Petition requested the Presiding Judge clarify his ruling in the Prehearing Order, FCC 93M-426, released June 30, 1993 ("PHO"), which denied PacBell's request for witness immunity filed during the predesignation phase of this proceeding. PacBell's Petition was limited to a discussion of the proper standard applicable to a request for immunity from prosecution under FCC regulations, and a request that it be

permitted to renew its request for immunity at the prehearing conference scheduled for September 21, 1993.

2. In responding to PacBell's Petition, the Bureau did not confine its comments to the narrow procedural issue raised by PacBell. Instead, the Bureau, without notice to TMC or the Presiding Judge, appears to be suggesting that an inquiry be undertaken into issues that have not heretofore been raised against TMC through a timely filed request for enlargement of issues or otherwise. The new matters raised by the Bureau not only propose a dramatic expansion of the scope of the relief requested by PacBell in its Petition, but also for the first time gratuitously interject without proper foundation serious issues of misconduct against TMC. As demonstrated in TMC's Reply attached hereto, such a broadening of the issues cannot be properly made in this manner. First, because these matters were raised for the first time in the Bureau's responsive Comments, TMC has not otherwise had an opportunity to address these matters on the record. Secondly, the proper means to raise any issues not designated by the Presiding Judge is via a timely filed request for enlargement of the issues.

As the proposed TMC Reply is limited exclusively to the new and prejudicial matters that have been raised by the Bureau without proper procedure having been followed, TMC respectfully requests that it be permitted to submit the accompanying Reply to

the Bureau's Comments, and that TMC's Reply be considered by the Presiding Judge in evaluating the matters raised for the first time in the Bureau's Comments.

Respectfully submitted,

Clark-Bader, Inc.
d/b/a TMC Long Distance

By: 

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Dated: August 9, 1993

CERTIFICATE OF SERVICE

I, Suzanne Helein, hereby certify that on this 9th day of August, 1993, I caused a true and correct copy of the foregoing "Motion for Leave to File Reply to Comments of the Common Carrier Bureau" in CC Docket No. 93-161, File No. E-89-85, to be sent to the following in the manner indicated:


Via Facsimile and
First Class Mail to:

James P. Tuthill, Esquire
Nancy C. Woolf, Esquire
Pacific Bell
140 New Montgomery Street
Room 1530-A
San Francisco, CA 94105

and by hand delivery to:

Thomas D. Wyatt, Esquire
Chief
Formal Complaints and Investigation
Branch
Federal Communications Commission
Room 107
1250 23rd Street, N.W.
Washington, DC 20554

The Honorable Walter C. Miller
Administrative Law Judge
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Room 213
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Suzanne Helein